

Montana Water Court
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FILED
07/17/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41U-0057-R-2023
Stern, Anika
8.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
DEARBORN RIVER BASIN (41U)
PRELIMINARY DECREE

CLAIMANTS: Elk Creek Colony Inc; Milford Colony Inc

CASE 41U-0057-R-2023

41U 9924-00

41U 9934-00

NOTICES OF INTENT TO APPEAR: Elk Creek Colony
Inc; Dearborn Ranch LLC

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Elk Creek Colony Inc. is the record owner of claim 41U 9924-00. Milford Colony Inc. is the record owner of claim 41U 9934-00.

2. Claims 41U 9924-00 and 41U 9934-00 were decreed with DNRC issue remarks:

Claim 41U 9924-00:

WHEN THIS CLAIM WAS ORIGINALLY DECREED, THE PERIOD OF DIVERSION WAS NOT INCLUDED AS AN ELEMENT OF THE CLAIM. IN 2008, THE PERIOD OF DIVERSION ELEMENT WAS ADDED TO ALL CLAIM ABSTRACTS. IT IS NOT CERTAIN IF THE PERIOD OF DIVERSION DATES ADDED TO THIS CLAIM ACCURATELY REFLECT THE HISTORICAL PERIOD OF DIVERSION. MORE INFORMATION IS REQUIRED.
EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.

Claim 41U 9934-00:

DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.
POINT OF DIVERSION NO. 1 APPEARS TO BE IN THE NWNENE GOV. LOT 1 SEC. 1 TWP 18N RGE 6W.
THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A USE RIGHT ON FLAT CREEK WITH A PRIORITY DATE PREDATING CASE NO 7808, LEWIS AND CLARK COUNTY. IF NO OBJECTIONS ARE FILED TO PRIORITY DATE OR TYPE OF HISTORICAL RIGHT, THESE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS REMARK WILL BE REMOVED.

3. Elk Creek Colony filed a Notice of Intent to Appear for claim 41U 9924-00 and Dearborn Ranch filed a Notice of Intent to Appear for claim 41U 9934-00.

4. Claim 41U 9924-00 was decreed with a period of diversion issue remark. An April 1 to November 30 period of use was claimed for stock claim 41U 9924-00. When DNRC added a period of diversion to claim 41U 9924-00, a matching period of diversion was added (April 1 to November 30), it was uncertain if the period of diversion is correct.

5. Claim 41U 9924-00 was also decreed with an issue remark indicating that the DNRC was unable to confirm the existence of the claimed reservoir. The DNRC did not substantiate the addition of the issue remark in the examination documents. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. The DNRC did not overcome the prima facie statement of claim by simply adding the issue remark to claim 41U 9924-00.

6. The first and third issue remarks decreed on claim 41U 9934-00 are notice-type issue remarks and since no objections were filed, no further attention is required.

7. The second issue remark decreed on claim 41U 9934-00 indicates the following changes should be made to the claim:

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Tw</u>	<u>Rge</u>	<u>County</u>
1	1	NW	NENE	1	18N	6W LEWIS AND CLARK
Period of Diversion: MAY 1 TO AUGUST 15						
Diversion Means: HEADGATE						
Ditch Name: BEAN-EMBODY DITCH						
2			SWNESE	9	18N	5W LEWIS AND CLARK
Period of Diversion: MAY 1 TO AUGUST 15						
Diversion Means: HEADGATE						
3			NESESE	10	18N	5W LEWIS AND CLARK
Period of Diversion: MAY 1 TO AUGUST 15						
Diversion Means: HEADGATE						
4			NWSESW	12	18N	5W LEWIS AND CLARK
Period of Diversion: MAY 1 TO AUGUST 15						
Diversion Means: HEADGATE						
Ditch Name: HOGAN DITCH						

8. A deadline was set for Elk Creek Colony Inc. to file a statement indicating the period of diversion for claim 41U 9924-00. A deadline was also set for Milford Colony Inc. to file a statement indicating whether it agrees with the point of diversion modification suggested in the issue remark for claim 41U 9934-00. On June 7, 2023, Elk Creek Colony Inc. and Milford Colony, Inc. filed a statement indicating they agree the period of diversion for claim 41U 9924-00 is April 1 to November 30. The Statement also indicated the changes described in Finding of Fact No. 7 should be made for claim 41U 9934-00.

9. A deadline was set for Notice of Intent to Appear parties, Elk Creek Colony Inc. and Dearborn Ranch LLC file statements indicating how the Notice of Intent to Appear concerns should be resolved. The Order indicated that if nothing were filed by the deadline, this Water Master would conclude the Notice of Intent to Appear parties have decided not to pursue the Notices of Intent to Appear filed in this Case and dismissal would be recommended in the forthcoming Master's Report. On June 30, 2023, Dearborn Ranch, LLC filed a statement indicating that based on the June 7, 2023 filing in

this Case, it appears its Notice of Intent to Appear is resolved and “Dearborn Ranch withdraws its Notice of Intent to Appear conditions upon the Water Court implementing the changes set forth in the Statement by Claimants in Response to a Court Order dated June 7, 2023.” Elk Creek Colony Inc. did not file anything addressing the Notice of Intent to Appear it filed.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks decreed on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. The notice-type issue remarks decreed on claim 41U 9934-00 have served their purpose. As no objections were filed, no further proceedings are required.

RECOMMENDATIONS

1. Claim 41U 9934-00 should be modified as shown in Finding of Fact No. 7.

2. The issue remarks should be removed from claims 41U 9924-00 and 41U 9934-00.

3. Elk Creek Colony Inc.’s Notice of Intent to Appear for claim 41U 9924-00 should be dismissed.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

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Elk Creek Colony and Milford Colony Inc.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U

Water Right Number: 41U 9924-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: ELK CREEK COLONY INC
PO BOX 627
AUGUSTA, MT 59410 0627

Priority Date: MAY 25, 1911

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: UNNAMED TRIBUTARY OF LONG COULEE

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSWNE	32	18N	4W	LEWIS AND CLARK

Period of Diversion: APRIL 1 TO NOVEMBER 30

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWSWNE	32	18N	4W	LEWIS AND CLARK

Diversion to Reservoir: DIVERSION # 1

Period of Use: APRIL 1 TO NOVEMBER 30

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NE	32	18N	4W	LEWIS AND CLARK

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U**

Water Right Number: 41U 9934-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MILFORD COLONY INC
9605 US HWY 287
WOLF CREEK, MT 59648 8637

Priority Date: JUNE 6, 1911

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 6.06 CFS

Volume: 200.00 AC-FT

Climatic Area: 3 - MODERATE

Maximum Acres: 160.00

Source Name: FLAT CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1	NWNENE	1	18N	6W	LEWIS AND CLARK
Period of Diversion: MAY 1 TO AUGUST 15						
Diversion Means: HEADGATE						
Ditch Name: BEAN-EMBODY DITCH						
2		SWNESE	9	18N	5W	LEWIS AND CLARK
Period of Diversion: MAY 1 TO AUGUST 15						
Diversion Means: HEADGATE						
3		NESESE	10	18N	5W	LEWIS AND CLARK
Period of Diversion: MAY 1 TO AUGUST 15						
Diversion Means: HEADGATE						
4		NWSESW	12	18N	5W	LEWIS AND CLARK
Period of Diversion: MAY 1 TO AUGUST 15						
Diversion Means: HEADGATE						
Ditch Name: HOGAN DITCH						
Period of Use: MAY 1 TO AUGUST 15						

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	160.00		N2N2	10	18N	5W	LEWIS AND CLARK
Total:	160.00						

Remarks:

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

9897-00

9900-00

9915-00

9916-00

9932-00

9933-00

9934-00